HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23414 OF 2006

Between:

C.Jeevan Khan
. . .Petitioner

AND

District Consumer Forum and others
. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Shri A.Srinath

10th November, 2006

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PER G.S.SINGHVI, CJ

After two years and more than one month of the adjudication of complaint filed by respondent No.2 – Shri A.Hussain Basha which was registered as Consumer Dispute No.153 of 2003, the petitioner has filed this petition for quashing the proceedings of Execution Application No.12 of 2006 pending before District Consumer Forum, Kadapa (for short 'the District Forum') and for restraining the latter from taking action in furtherance of notice issued under Section 27 of the Consumer Protection Act, 1986 (for short 'the Act').

The facts:

Respondent No.2 filed a complaint under Section 12 of the Act with the following assertions and allegations:

i) that he is a physically challenged person (being deaf and dumb) and he is engaged in the profession of agriculture;

ii) that in the year 1999, he deposited Rs.10,000/- with Golden Forests India Limited (hereinafter described as 'the Company') and the latter issued F.D. Bond bearing No.503051, dated 8.10.1999;

iii) that opposite party No.2 (petitioner herein), who was acting as agent of the Company assured him that the amount of the F.D. Bond will be repaid with interest, and

iv) that despite repeated contacts made with him, opposite party No.2 has failed to pay the promised amount and, in this manner, the Company and opposite party No.2 have defaulted in complying with the terms of

the bond and they are liable to pay Rs.46,800/- jointly and severally for the deficiency of service.

Notice of the complaint was duly served on the opposite parties including opposite party No.2 (petitioner herein), but neither of them filed reply to contest the claim set up by respondent No.2. Therefore, after considering the evidence produced by the complainant (respondent No.2), the District Forum passed order dated 4-9-2004, whereby it directed the opposite parties to pay Rs.46,800/- to the complainant along with interest at the rate of 9% from the date of maturity i.e., 9.10.2002 till the date of actual realization.

The petitioner neither challenged the aforementioned order of the District Forum nor he paid the amount, which became payable to respondent No.2 in terms of the order of the District Forum. After some time, respondent No.2 filed an application for execution of order dated 4.9.2004. The same stands registered as E.A.No.12 of 2006. On receipt of notice dated 4.7.2006 issued by the District Forum under Section 27 of the Act, the petitioner filed this petition with the following prayer:

> "It is, therefore, prayed that this Hon'ble Court may be pleased to issue an order or a direction or a writ, more particularly one in the nature of a writ of prohibition declaring the action of the 1st respondent in proceeding with execution proceedings in E.A.No.12 of 2006 in C.D.No.153 of 2003 as illegal, arbitrary and violative of Article 143 of the Constitution of India and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

We have heard Shri A.Srinath, learned counsel for the petitioner, who made dispassionate appeal to the Court to entertain the writ petition by stating that his client was only an agent of the Company and he should not be held liable for repaying the maturity amount due

to the claimants. He submitted that respondent No.2 became a victim of circumstances inasmuch as the Advocate to whom his client had engaged for contesting the complaint filed by respondent No.2 did not appear before the District Forum and, on that account, the latter held ex parte proceedings and passed order dated 4.9.2004. He then argued that the District Forum committed a jurisdictional error by entertaining the complaint of respondent No.2 because all matters pertaining to the Company stood transferred to the Supreme Court pursuant of order dated 12.09.2003 passed in Transfer Petition (Civil) No.696 of 2002.

We have considered the submissions of the learned counsel, but have not felt impressed either with his dispassionate appeal for compassion or with his innovative argument that the order dated 12.09.2003 passed by the Supreme Court operates as a bar to the entertaining of the complaint by the District Forum.

A reading of the order of the Supreme Court shows that while transferring Writ Petition (C) No.44 of 1998 pending before Bombay High Court, their lordships directed that all proceedings referred to in Annexure-P3 filed along with Transfer Petition shall stand transferred to the Supreme Court and that no Court shall entertain winding up petition involving the Company. In our considered view, that order cannot be treated as a bar to the entertaining of complaint filed by the aggrieved person under the Act. Even otherwise, it is not possible to countenance that the Hon'ble Supreme Court intended to debar all the remedies available to the aggrieved persons under all the statutes including the Act. Therefore, we are unable to agree with the learned counsel for the petitioner that the District Forum did not have the jurisdiction to entertain the complaint filed by respondent No.2.

Insofar as the petitioner's challenge to the notice issued by the District Forum under Section 27 of the Act is concerned, we do not find

any valid ground or justification to entertain the same because order dated 4.9.2004 passed by the District Forum has become final. The petitioner could have challenged that order by filing an appeal under Section 15 of the Act. However, the fact of the matter is that he did not avail the remedy of appeal within the period of limitation prescribed under that section. It is also significant to note that even in this petition, the petitioner has not prayed for quashing order dated 4.9.2004 passed by the District Forum. Therefore, the action initiated for execution of that order cannot be stalled by issuing a writ under Article 226 of the Constitution of India.

We are further of the view that Execution Application filed by respondent No.2 is the necessary and logically concomitant and culmination of the effort made by him is to get his grievance redressed through the mechanism of complaint under Section 12 of the Act and there is no reason for the Court's interdiction in the matter.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the main petition, W.P.M.P.No.29833 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 10.11.2006

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